UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 739

Case No. 815: CHAKRAVARTI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Mikuin Leliel Balanda;

Whereas, on 1 June 1994, Ashok Chakravarti, a former staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 25 September 1994, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal to order:

> "A payment of US$ 50,000 from UNDTCD/UNDDSMS [UN Department of Technical Cooperation for Development/UN Department of Development Support and Management Services], as indemnity for harassment, mental and financial strain, and psychological injury.
>
> ... the Secretary-General that disciplinary action be taken against those officials in the United Nations who were responsible for the events against me."

Whereas the Respondent filed his answer on 22 December 1994;

Whereas the Applicant filed written observations on 7 February 1995;

Whereas, on 16 October 1995, the Applicant submitted additional observations, on which the Respondent submitted comments on 27 October 1995;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 23 September 1980, as an Economist/Planner at the L-3 level with the United Nations Commission on Trade and Development. He held a number of fixed-term appointments in Bhutan, Somalia, Geneva and Gambia. From 22 September 1984 to 31 May 1987, he worked for UNDP, as Advisor in Harare, Zimbabwe. With effect from 2 August 1987, the Applicant served on a one year fixed-term appointment in Malawi with the Technical Assistance Recruitment and Administration Service (TARAS), as an Advisor on Aid Coordination. His appointment was renewed several times, through December 1990, when he separated from service and returned to his home country, India. The Applicant re-entered the service of TARAS in Malawi, on a six month fixed-term appointment, with effect from 27 February 1991. This appointment was renewed through 26 February 1992, when the Applicant separated from service.

Due to an oversight by TCD, the offer of the appointment starting on 27 February 1991 was not made until 17 April 1991. On 7 May 1991, the Applicant signed a six-month contract, with effect from 27 February 1991.

In a memorandum dated 23 July 1991, the Chief, TARAS, conveyed a request from the Applicant to the Senior Personnel Officer, Office for Human Resources Management (OHRM), for an exception to staff rule 209.8(m) which would have required that his repatriation grant in respect of his prior service in Malawi, which he completed in December 1990, be paid to him in local currency. The Applicant had requested that he be paid a repatriation grant and his final pay entitlements in convertible currency.

The Applicant did not receive salary advances until August 1991, and he was not placed on the payroll until November 1991. By cable, dated 13 August 1991, the Chief of TARAS expressed to the Applicant his regret over the delay and consequent inconvenience. He noted:

> "THE MAIN CAUSE OF THESE DELAYS LIES IN THE LIQUIDATION OF YOUR PAST SEVERANCE PAYMENTS RELATED TO PRIOR ASSIGNMENTS. SUCH DELAYS WOULD HAVE BEEN AVOIDED HAD YOU ACCEPTED OUR PROPOSAL TO MAINTAIN CONTINUITY OF SERVICE BY BRIDGING THE SMALL GAP OF TWO MONTHS BY MEANS OF SPECIAL LEAVE. DELAYS WERE FURTHER COMPOUNDED AS A RESULT OF YOUR REQUEST FOR PAYMENT IN A CURRENCY OTHER THAN THAT AUTHORIZED. HOWEVER, TO AVOID INCONVENIENCE TO YOURSELF, OUR SERVICE DID RELEASE, THROUGH SALARY ADVANCES, PAYMENTS FOR MARCH THROUGH JUNE. WE SHALL CONTINUE ASKING THE MONTHLY RELEASE OF YOUR SALARY UNTIL ALL PAYMENTS RELATED TO YOUR FIRST ASSIGNMENT ARE FINALIZED."

In a memorandum dated 19 November 1991, the Senior Personnel Officer, OHRM, informed the Chief, TARAS, that the Applicant's repatriation grant could not be authorized, as he had not furnished satisfactory evidence of relocation in a country other than his last duty station. He stated that the Applicant's repatriation grant would be "held in escrow until such a time as he separates from his current assignment and relocates away from Malawi." With regard to his other entitlements, on 10 January 1992, the Chief, Compensation and Classification Service, OHRM, authorized payment to the Applicant in dollars "as an exceptional measure." He also confirmed that the Applicant's repatriation grant should be paid "in the currency of the established country of residence."

On 1 October 1991, and again on 5 December 1991, the Applicant wrote to the Secretary-General requesting administrative review of the decision "not [to] accept the validity of my repatriation after the completion of my previous assignment ..." and review of a series of administrative rules "because in effect they violate our conditions of service and are arbitrary ...".

On 14 January 1992, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 5 November 1992, the JAB adopted its report. Its findings and recommendations read as follows:

"Findings and Recommendations

23. The Panel finds that:

(a) At the end of his first assignment in Malawi, Appellant was entitled to the payment of repatriation grant in Zimbabwe currency;

(b) He was not entitled to payment of that grant in US dollars; and

(c) He is entitled to the payment of an indemnity for the late payment of his salary, in an amount approximately equal to the interest he would have been charged on a loan in an amount equivalent to his monthly salary for the period from the end of the first month of employment until the payment of the first advance;

24. The Panel recommends, therefore, that:

(a) Since Respondent has acknowledged his entitlement to repatriation grant, Appellant be given the choice of being paid it in either Indian or Zimbabwe currency, and

(b) He be paid an indemnity of US$500.00."

On 23 November 1992, the Director of Personnel transmitted to the Applicant a copy of the JAB report and informed him that the Secretary-General had decided, "in accordance with the recommendation of the Board, that you be paid repatriation grant in one of either currency of India or Zimbabwe and that you be paid an indemnity in the amount of US$500 to compensate for delays in payment of your salary."

On 25 September 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Non-payment of the Applicant's monthly salary constituted non-observance of the conditions of service under his contract which commenced on 27 February 1991. Events which occurred prior to this appointment have no relevance to the fulfillment of these contractual obligations.

2. The compensation of US $500 awarded to the Applicant by the JAB is grossly inadequate to compensate him for the mental and financial strain caused by the non-observance of his conditions of service.

3. Disciplinary proceedings should be instituted against those responsible for the delay in payment of the Applicant's salary.

Whereas the Respondent's principal contentions are:

1. The delay in payment of the Applicant's salary was partially caused by difficulties in the calculation of his entitlements under a prior contract.

2. The award of damages recommended by the JAB and accepted by the Secretary-General was reasonable in the circumstances. The fact that the Applicant considers he should be awarded a greater sum is no ground for appeal.

3. The Applicant's terms and conditions of employment do not include the right to have disciplinary proceedings instituted against third parties.

The Tribunal, having deliberated from 2 to 22 November 1995, now pronounces the following judgement:

I. The Applicant challenges the Respondent's decision regarding various issues connected with the winding up of his first assignment which ended in December 1990, as well as with the non-payment of his

monthly salary and allowances due to him under his new contract, which became effective on 27 February 1991.

II. The Applicant's claims were first submitted to the Joint Appeals Board (JAB), which recommended that the Applicant be given the choice "of being paid [his repatriation grant] in either Indian or Zimbabwe currency" and "an indemnity of US$500.00" for the late payment of his salary.

III. The Secretary-General decided to accept the JAB's recommendations and so informed the Applicant on 23 November 1992. Not satisfied with this decision, the Applicant appealed it. He claims compensation substantially higher than the one granted and also requests that "disciplinary action be taken against those officials in the United Nations who were responsible for the events ..."

IV. The Respondent, in his answer, argues that inasmuch as the award of damages recommended by the JAB has been accepted by the Secretary-General, the "fact that Applicant considers that he should be awarded a greater sum of damages is not a proper ground of appeal". The Respondent adds other considerations pointing out that "the Tribunal should encourage the settlement of disputes by indicating that, if the Respondent accepts a recommendation of a JAB to pay reasonable damages to an applicant, the Tribunal will only interfere with such a decision if it is wrong in law, mistaken in fact or improperly motivated."

V. The Tribunal will refrain from commenting on this policy matter. It will turn its attention first to the issue of the receivability of the Applicant's appeal. Article 7 of the Tribunal's Statute governs receivability. Paragraph 3 provides: "In the event that the recommendations made by the joint body and

accepted by the Secretary-General are unfavourable to the applicant, and in so far as this is the case, the application shall be receivable, unless the joint body unanimously considers that it is frivolous."

VI. The Tribunal finds that this text cannot be used as grounds for claiming that the application is not receivable. In the Tribunal's view, the right of staff members to appeal is fundamental and it may not be curtailed unless a specific text clearly so provides, as, for instance, in the last clause of article 7.3. In the present case, no text bars the Applicant from coming before the Tribunal.

VII. The Respondent relies on the fact that the JAB has accepted the Applicant's views and that the Secretary-General has, in turn, accepted the JAB's recommendation. On these grounds, the Respondent concludes that the outcome has not been unfavourable to the Applicant, and that, therefore, article 7, paragraph 3 is not applicable. In the Tribunal's view, the Respondent's reading of article 7 of its Statute is excessively narrow and cannot be accepted by the Tribunal. The Tribunal finds that it is for an applicant, in the first instance, to decide whether the outcome of the recourse before the JAB has been favourable to him or her. In this case, it is not irrational for the Applicant to hold the view that the outcome has been unfavourable, because, even though on the whole, his claim was upheld, the compensation granted was, in his opinion, insufficient.

VIII. The Tribunal considers that, inasmuch as the Applicant may lawfully contend that the Secretary-General's decision has been unfavourable on that ground, the application is receivable under article 7, paragraph 3 of the Tribunal's Statute. It therefore decides to consider the case on its merits.

IX. In this respect, the Tribunal finds that the amount of the indemnity recommended by the JAB and accepted by the Secretary-General was reasonable and duly took into consideration the injury caused to the Applicant by the delay of the Administration.

X. As for the plea requesting the initiation of disciplinary proceedings against some UN officials, the Applicant does not have standing to make such a request. The Tribunal will therefore not entertain this plea.

XI. Other issues first raised by the Applicant at a later stage in these proceedings will not be entertained by the Tribunal as they are not germane to the present appeal.

XII. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Vice-President

Mikuin Leliel BALANDA
Member

New York, 22 November 1995

R. Maria VICIEN-MILBURN
Executive Secretary